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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,027	03/22/2004	Thomas J. Wheeler	OLYM/0091.P1	1013

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William B. Patterson  
MOSER, PATTERSON & SHERIDAN, L.L.P.  
Suite 1500  
3040 Post Oak Blvd.  
Houston, TX 77056

EXAMINER

EPPS, TODD MICHAEL

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/806,027

Applicant(s)

WHEELER ET AL.

Examiner

Todd M. Epps

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on March 22, 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/24/2005.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 9/19/05.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the first Office Action for serial number 10/806,027, Tool Securing Mechanism For Hangtag Assembly, filed on March 22, 2004.

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to apparatus, classified in class 248, subclass 317.
- II. Claims 16-19, drawn to methods, classified in class 359, subclass 372.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, and II are related as apparatus and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the apparatus as claimed can be practiced with another materially different apparatus or (2) the apparatus as claimed can be used in a materially different process of using that apparatus (MPEP § 806.05(h)). In the instant case, the apparatus could be used as ornamental jewelry and more particularly to an earring and display card assembly.

During a telephone conversation with Jason Huang on 9/19/05 a provisional election was made without traverse to prosecute the invention of group I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 29-47 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: line 2, "a body" should be --a body portion--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding rejection of claims 1-3, and 8-15 under 35 U.S.C. 112 - 2nd paragraph, the word "tool" cites combination / subcombination problem. "Tool" is not positively cited in the preamble of claim 1, and it is considered as functional language. The applicant is not claiming "tool" in the body of claim.

Claims 2, 7, and 9 are rejected as depending on rejected claim 1; claims 3, and 8 are rejected as depending on rejected claim 2; claim 4 is rejected on depending on rejected claim 3; claim 5 is rejected on depending on rejected claim 4; claim 6 is

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rejected on depending on rejected claim 5; and claims 10-15 are rejected as depending on rejected claim 9.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Publication No. 2004/0099553 to Chen.

Chen '553 discloses a hangtag assembly (fig. 2) comprising: a body portion (12); and a tool fastening mechanism (14); wherein a tool fastening mechanism (14) comprising at least one pair of openings (23) to receive a fastener (26), and a tool has a shank portion (30), wherein the body portion (12) has a front surface (fig. 2) and a back surface (fig. 2), further comprises a hanging mechanism (11) connected to the body portion (12), and the fastener may be wrapped around the shank portion (30) of the tool and woven through the openings; further comprising a planar surface (10) offset from the front surface (fig. 2) of the body (12), with at least one pair of openings (23) being disposed within the planar surface (10); wherein each pair of openings is disposed on a respective recess formed on the planar surface substantially normal to the longitudinal axis of the tool (fig. 2); wherein the planar surface (10) is substantially parallel to the

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front surface of the body portion (12), wherein the fastener (26) is a cable tie (24) comprising a retaining member (21), and wherein the tool is a wrench (fig. 2).

Claims 1, and 9-15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,637,591 to Chen.

Chen '591 discloses a hangtag assembly (10) comprising: a body portion (11); and a tool fastening mechanism (20); wherein a tool fastening mechanism (20) comprising at least one pair of openings (fig. 3) to receive a fastener (fig. 3), and a tool has a shank portion (32); wherein the body portion further comprises a front portion (fig. 3) and a back portion (fig. 3), and at least one pair of apertures (fig. 3) are disposed through the back portion; wherein the body (11) has at least two pair of apertures (211, and 221); wherein the fastening mechanism further comprises a recess (fig. 3); and wherein the body and the fastening mechanism are constructed of plastic.

Regarding claims 14-15, the tool is not a positive part of the claim. Therefore, these claims limitations are met by Chen '591.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen '553 in view of U.S. Patent No. 6,935,516 to Chiang.

Regarding claim 6, Chen '553 teaches the previous invention wherein a hangtag assembly for hanging a tool includes a tool fastening member, but fails to specifically teach a label placed on the planar surface. Nevertheless, Chiang '516 teaches a label (11). Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have a hangtag assembly with a label as taught by Chiang '516 wherein doing so would deter theft.

To locate the label over the recess of the planar surface would have been obvious as a matter of its practicality in the area as the label is a tear proof to prevent from theft.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,996,817 to Kao

U.S. Patent No. 4,450,961 to Bies

U.S. Design Patent No. 486,381 to Tsai

The above references disclose a structure similar to the applicant's invention.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd M. Epps whose telephone number is 571-272-8282. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Todd M. Epps  
Patent Examiner  
Art Unit 3632  
September 21, 2005

 9/22/05  
ROBERT P. OLSZEWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600